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*Attorneys for Defendant*
*Resourceful Developments, Inc.*

**SUPERIOR COURT OF CALIFORNIA**

**COUNTY OF LOS ANGELES**

| | |
|---|---|
| Norther California Collection Service, Inc.,<br><br>Plaintiff,<br><br>v.<br><br>Resourceful Developments, Inc.,<br><br>Defendant. | Case No. EC068574<br><br>**DECLARATION OF CHENEY SHAPIRO IN SUPPORT OF OPPOSITION TO MOTION FOR SUMMARY ADJUDICATION**<br><br>Date: May 31, 2019<br>Time: 8:30 a.m.<br>Dept.: D |

I, Cheney Shapiro, declare as follows:

1. At all times relevant, I was the treasurer of Defendant, Resourceful Developments, Inc. ("Resourceful" or "Defendant"). I know all the facts recited in this declaration based upon my own personal knowledge, or as the custodian of Resourceful's business records referenced below, which were regularly made and kept in the course of regularly conducted business activity and usual practice, were made at or near the time of the event it records, and the record was made by person with knowledge, or from information transmitted by a person with knowledge, and who reported such knowledge in the regular course of business. If called to testify, I could and would state as follows:

2. During the relevant time period, Resourceful was engaged in the renovation of residential properties for third parties. In renovating the property, Resourceful engaged independent contractors to make the improvements to the properties.

3. On or about June 2013, Resourceful was issued a workers' compensation policy by State Compensation Insurance Fund ("State Fund"). At the time that the policy was issued, the total estimated annual premium was $1,791. Resourceful paid State Fund an initial policy premium of $2,289.75 for the June 2013-June 2014 policy year.

4. Given its use of independent contractors, Resourceful believed that the estimated annual premium was a realistic amount that would be incurred for workers' compensation insurance for the entire policy period. In particular, based on conversations with its insurance broker, Resourceful classified individuals performing work on the project as independent contractors, for whom Resourceful would not be required to obtain workers' compensation insurance. Specifically, Resourceful classified the individuals as independent contractors based on: (i) Resourceful did not control the manner by which the individuals performed the work; (ii) Resourceful made payments to the individuals for projects they completed, which included labor and materials for improvements on the projects; (iii) Resourceful did not pay the individuals on an hourly basis; (iv) the individuals provided their own tools and equipment; and (v) Resourceful did

not direct the individuals' methods of completing the projects or the hours or length of time to perform work on the projects.

5. In or about February 2015, State Fund performed an audit of Resourceful's payroll for purposes of determining Resourceful 's final premium. As part of the audit, Resourceful produced copies of checks to the auditors as requested, which contained numerous checks being written to various independent contractors retained by Resourceful. The checks also included payments for material and loan repayments.

6. On or about March 10, 2015, State Fund sent Resourceful an invoice for premiums for the June 28, 2013- June 28, 2014 policy year in the amount of $130,777.95. On or about March 12, 2015, State Fund sent Resourceful an invoice for premiums for the June 28, 2014- September 11, 2014 policy year in the amount of $45,539.54.

7. Upon receiving the invoices, Resourceful requested reconsideration of invoices directly with State Fund. On August 6, 2015, I received two letters from Robert Marchetti of State Fund acknowledging Resourceful's audit dispute. True and correct copies of the correspondence from Mr. Marchetti are attached as Exhibits A and B.

8. At no time did Resourceful agree that the amount set forth in the invoices were correct, due or payable, and at no time did Resourceful agree to pay that amount.

9. Resourceful subsequently received copies of the audit performed by State Fund. In reviewing the audit, it is apparent that State Fund included payments for material, which it classified as payment for labor. For instance, in the 2013 Audit (the period of June 28, 2013 through June 28, 2014), State Fund classified payments to Brian Hughes in the amount of $29,600 as wages. The payments to Mr. Hughes, however, were only for custom cabinets supplied by Mr. Hughes. Likewise, in the 2014 Audit (for the period of June 28, 2014 to September 11, 2014), State Fund classified payments to Brian Hughes in the amount of $10,500 as wages. Again, the payments to Mr. Hughes were for cabinets only. Mr. Hughes performed no labor on the projects at any time.

10. The 2013 and 2014 Audits also classified the following payments as wages: (i) payment of $70,156 to Cesar Cuevas, approximately 50% of which was for materials; (ii) payment of $114,428 to Jehu Pineda, approximately 50% of which was for materials; (iii) payment of$4,400 to Leonel Samora, who supplied and delivered countertops, and provided no labor; (iv) payment of $16, 325 to Ruben Galivs, who supplied Heating, Ventilation and Air Conditioning (HVAC) systems and equipment, and provided no labor; (v) payment of $41,196.89 to Sergio Chavez, approximately 60% of which was for materials; (vi) payment of $36,805 to Enrique Fregoso, approximately 60% of which was for materials; (vii) payment of $15, 133 to Shawn Mclendon, approximately 60% of which was for materials; (ix) payments of $850 to Anibal Abolsky, who is a structural engineer; and (x) payments of$2,404 to Luis Margeno, who is a draftsman.

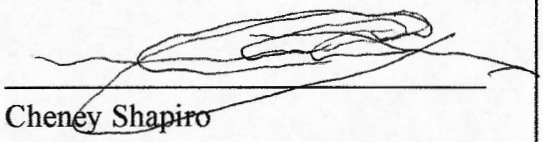
11. The 2013 audit also includes payments to Jordana Shapiro. These payments, however, were for loan repayments and for development of a website for Resourceful.

12. As set forth above, the 2013 and 2014 Audits contain entries for individual classified as independent contractors, who would not be subject to premiums under the terms of the policy.

13. On or above August 10, 2016, Resourceful caused its attorney David Prager, Esq. to send a letter on behalf of Resourceful to Robert Marchetti of State Fund. In his correspondence, Mr. Prager references the audit dispute between State Fund and Resourceful relating to the 2013 Audit (for the June 28, 2013 – June 28, 2014 policy period) and the 2014 Audit (for June 28, 2014 – September 11, 2014 policy period). Mr. Prager also requested copies of all documentation substantiating the amounts alleged to be outstanding. A true and correct copy of Mr. Prager's correspondence to Mr. Marchetti is attached hereto and incorporated as Exhibit C.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on May 17, 2019 at Los Angeles, California.



Cheney Shapiro

Exhibit A

STATE COMPENSATION INSURANCE FUND

August 6, 2015

Attention: Cheney Shapiro
Resourceful Developments, Inc
1810 Avalon St
Los Angeles, CA 90026

Policy No.: 9063211-2013
Policy Dates: 06/28/2013 to 06/28/2014
Bill Date: 03/10/2015
Bill Amount: $130,777.95

Dear Policyholder,

This letter acknowledges receipt of your audit dispute notification dated July 8, 2015.

The following additional information is required to complete the review and determine the outcome:

1) In writing, please explain clearly the specific dollar amount of remuneration/payroll you are disputing, and please indicate which specific workers' compensation classification code(s) you feel are correct and break that out for us by the specific dollar amount of remuneration/payroll for each of your employees that you are disputing assignment of payroll for.

2) Copies of your original employee time sheets for the entire audit period (only for each of your employees that you are disputing the assignment of payroll for).

3) Check copies (reflecting when employees were paid by you) that correspond with/tie to each and every one of the employee time sheets for the entire audit period (only for each of your employees that you are disputing the assignment of payroll for).

If the necessary information is not received by the due date noted below, your audit dispute may be denied and the bill associated with the audit in question will remain due and payable.

If you have any questions or concerns, please don't hesitate to contact me.

**Due date**: August 17, 2015. **Using any of the means listed below, please respond to:**

Attn: Robert F Marchetti
Fax (559) 433-3848
Email rfmarchetti@scif.com
Mail State Compensation Insurance Fund
P.O. Box 8192
Pleasanton, CA 94588

Sincerely,

Robert F Marchetti
Senior Premium Auditor – Audit Operations Unit
Phone (559) 392-6645

Enc:

STATE COMPENSATION INSURANCE FUND

cc: Policy File
Broker R I C INS GENERAL AGENCY INC, PO BOX 12279,SANTA ROSA,CA,95406
Assistant Audit Manager

Exhibit B

STATE COMPENSATION INSURANCE FUND

August 6, 2015

Attention: Cheney Shapiro
Resourceful Developments, Inc
1810 Avalon St
Los Angeles, CA 90026

Policy No.: 9063211-2014
Policy Dates: 06/28/2014 to 09/11/2014
Bill Date: 03/12/2015
Bill Amount: $45,539.54

Dear Policyholder,

This letter acknowledges receipt of your audit dispute notification dated July 8, 2015.

The following additional information is required to complete the review and determine the outcome:

1) In writing, please explain clearly the specific dollar amount of remuneration/payroll you are disputing, and please indicate which specific workers' compensation classification code(s) you feel are correct and break that out for us by the specific dollar amount of remuneration/payroll for each of your employees that you are disputing assignment of payroll for.

2) Copies of your original employee time sheets for the entire audit period (only for each of your employees that you are disputing the assignment of payroll for).

3) Check copies (reflecting when employees were paid by you) that correspond with/tie to each and every one of the employee time sheets for the entire audit period (only for each of your employees that you are disputing the assignment of payroll for).

If the necessary information is not received by the due date noted below, your audit dispute may be denied and the bill associated with the audit in question will remain due and payable.

If you have any questions or concerns, please don't hesitate to contact me.

**Due date**: August 17, 2015. **Using any of the means listed below, please respond to:**

Attn: Robert F Marchetti
Fax (559) 433-3848
Email rfmarchetti@scif.com
Mail State Compensation Insurance Fund
P.O. Box 8192
Pleasanton, CA 94588

Sincerely,

Robert F Marchetti
Senior Premium Auditor – Audit Operations Unit
Phone (559) 392-6645

Enc:

STATE COMPENSATION INSURANCE FUND

cc: Policy File
Broker R I C INS GENERAL AGENCY INC, PO BOX 12279,SANTA ROSA,CA,95406
Assistant Audit Manager

Exhibit C

GIBBS GIDEN ATTORNEYS AT LAW
LOCHER TURNER SENET & WITTBRODT LLP

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1880 CENTURY PARK EAST
12TH FLOOR
LOS ANGELES, CA 90067-1621
PHONE: (310) 552-3400
FAX: (310) 552-0805
WEBSITE: www.gibbsgiden.com

LAS VEGAS OFFICE
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SUITE 270
LAS VEGAS, NV 89113-4059
PHONE: (702) 836-9800
FAX: (702) 836-9802

REPLY TO LOS ANGELES OFFICE

AUTHOR'S E-MAIL: DPRAGER@GIBBSGIDEN.COM

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MICHAEL I. WAYNE
MARION T. HACK
MICHAEL B. GEIBEL
CHRISTOPHER E. NG
RICHARD E. HASKIN *
JONATHAN B. WOLF
GERALD A. GRIFFIN
ANYA STANLEY
RONALD S. SOFEN *
GARY E. SCALABRINI
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PHILIP C. ZVONICEK
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NATHAN D. O'MALLEY
JAMES I. MONTGOMERY, JR.
SARA H. KORNBLATT
JOHN H. CONRAD
ERIC W. SPIESS
JEFFREY B. LOVE
MOLLY E. HEALY
TIMOTHY P. ELSON *
JESSICA R. MOORE
DAVID M. PRAGER
LUKE N. EATON
SUMNER D. WIDDOES

OF COUNSEL
ALFRED FADEL ▲

RETIRED PARTNER
KENNETH C. GIBBS
(Full-Time Neutral)

JOSEPH M. GIDEN
(1933-2014)

August 10, 2015

VIA FACSIMILE AND E-MAIL
E-mail: rfmarchetti@scif.com
Fax: 559-433-3848

Robert F. Marchetti
Senior Premium Auditor
Audit Operations Unit
State Compensation Insurance Fund
P.O. Box 8192
Pleasanton, CA 94588
Phone: 559-392-6645

Re: Resourceful Developments, Inc. – SCIF Audit re: Policy 9063211 (2013 & 2014)

Dear Mr. Marchetti:

As a follow up to our conversation this afternoon, our office represents Resourceful Developments, Inc. ("Resourceful") in connection with an audit by the State Compensation Insurance Fund ("SCIF") and collection efforts on amounts alleged to be outstanding based thereon by Northern California Collection Service, Inc. Please direct all future correspondence regarding these matters to my attention.

We have reviewed your letter dated August 6, 2015 to Cheney Shapiro at Resourceful, recognizing Resourceful's audit dispute and requesting certain information by August 17, 2015. The client, in conjunction with our office, is in the process of gathering the information requested; however, we do not anticipate gathering the documents needed by August 17, and therefore are requesting a two-week extension of time to respond to your letter to **August 31, 2015.** Please advise whether this is acceptable, and if an alternative date is more acceptable to your office, please provide one to us.

We would also appreciate it if you would forward any and all documentation in SCIF's possession substantiating the amounts alleged to be outstanding and the basis for determining same, including the basis for classifying the workers at issue in their respective wage category or

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* ADMITTED IN CALIFORNIA & NEVADA
† ADMITTED IN NEVADA ONLY

categories. This would include copies of the audit reports for both 2013 and 2014 policy years, and copies of the March 10, 2015 and March 12, 2015 bills reflecting the employee classification codes used by SCIF in determining the premium amounts.

Thank you for your assistance with this matter. If you would like to discuss anything herein further, please do not hesitate to contact me.

Very truly yours,

David M. Prager
for GIBBS GIDEN LOCHER TURNER
SENET & WITTBRODT LLP

DMP

CC: Christopher E. Ng, Esq. (*via email only*)
Gary E. Scalabrini, Esq. (*via email only*)

***PROOF OF SERVICE***

I am employed in the County of Los Angeles; I am over the age of eighteen years and am not a party to the within action; and my business address is 300 West Glenoaks Boulevard, Suite 300, Glendale, California 91202.

On **May 17, 2019**, I served the document(s) described as **DECLARATION OF CHENEY SHAPIRO IN SUPPORT OF OPPOSITION TO MOTION FOR SUMMARY ADJUDICATION** in the party (or parties) in this action by delivering a true copy (or copies) addressed as follows:

STEVEN D. CRIBB
ANDRE J. LeLIEVRE
700 Leisure Lane
Sacramento, California 95815

XXX **BY U.S. MAIL:** I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice, an envelope (or envelopes) containing the document(s) would be deposited with the U.S. Postal Service on that same day, with postage thereon fully prepaid, at Glendale, California in the ordinary course of business. I am aware that, on motion of the party served, service is presumed invalid if the postal-cancellation date or postage-meter date is more than one day after the date of deposit for mailing.

☐ **BY OVERNIGHT DELIVERY**: I enclosed the document(s) in an envelope (or envelopes) or package (or packages) provided by an overnight-delivery carrier and addressed to the person(s) at the address(es) above. I placed the envelope(s) or package(s) for collection and overnight delivery at an office or a regularly utilized drop-box of the overnight-delivery carrier.

☐ **BY HAND DELIVERY:** I caused an envelope (or envelopes) containing the document(s) to be delivered by hand to the office(s) or address(es) of the addressee(s).

I declare under penalty of perjury under the laws of the State of California and the United States that the foregoing is true and correct. Executed on **May 17, 2019**, at Glendale, California.

Ryan Stubbe